

## **Addendum B**

### Addendum B: IBM's Objections to SCO's Alleged Evidence

Type of Evidence	Exhibits/Exemptions	Objections
Statements regarding the context of the development of UNIX, the UNIX ecosystem in 1985, the UNIX "head-start" and the parties' protection of their interests. (SCO K Br. ¶¶ 30-62.)	SCO Ex. 50; SCO Ex. 281; SCO Ex. 284; SCO Ex. 286.	No foundation or personal knowledge; Irrelevant; Improper expert opinion under FRE 702.
Contemporaneous and subsequent licensing documents containing the same or substantially similar terms to the IBM and Sequential Agreements. (SCO K Br. ¶¶ 63-71-75, 113.)	SCO Ex. 26; SCO Ex. 27; SCO Ex. 28; SCO Ex. 29; SCO Ex. 34; SCO Ex. 36; SCO Ex. 117, SCO Ex. 118; SCO Ex. 119; SCO Ex. 120; SCO Ex. 121; SCO Ex. 122; SCO Ex. 123; SCO Ex. 125; SCO Ex. 126; SCO Ex. 127; SCO Ex. 128; SCO Ex. 130; SCO Ex. 337; IBM Ex. 493.	Irrelevant; Violates the parol evidence rule.
Opinions of persons not involved in the negotiation of the Agreements regarding the Agreements' meaning, or opinions not expressed to the parties to the Agreements. (SCO K Br. ¶¶ 76-105, 138-156.)	SCO Ex. 4; SCO Ex. 5; SCO Ex. 8; SCO Ex. 10; SCO Ex. 12; SCO Ex. 14; SCO Ex. 24; SCO Ex. 38; SCO Ex. 41; SCO Ex. 43; SCO Ex. 50; SCO Ex. 69; SCO Ex. 75; SCO Ex. 138; SCO Ex. 261; SCO Ex. 333; SCO Ex. 337; SCO Ex. 351; SCO Ex. 355; SCO Ex. 360; SCO Ex. 375; IBM Ex. 297.	Irrelevant; Violates the parol evidence rule.
Affirmative use by SCO of a deposition taken during a different proceeding where neither IBM nor any IBM predecessor in interest had an opportunity to develop the testimony. (SCO K Br. ¶ 106, 108-09, 126-129, 133-137.)	SCO Ex. 19; SCO Ex. 24; IBM Ex. 513.	Hearsay.

Subject Matter or Exemption	Illustrative Examples	Objection(s)
Documentary evidence purporting to establish that IBM and Sequent thought they had to keep AIX or Dynix as a whole confidential. (SCO K Br. ¶¶ 164-168.)	SCO Ex. 129; SCO Ex. 133; SCO Ex. 134; SCO Ex. 135.	Irrelevant; Hearsay.
Opinions of negotiators of the APA purporting to contradict the plain meaning of the contract. (SCO K Br. ¶¶ 170-175, 178, 182-83.)	SCO Ex. 6; SCO Ex. 9; SCO Ex. 38; SCO Ex. 39; SCO Ex. 40; SCO Ex. 42; SCO Ex. 59; SCO Ex. 76; SCO Ex. 136; SCO Ex. 333; SCO Ex. 351; SCO Ex. 355; IBM Ex. 444; IBM Ex. 585.	Violates the parol evidence rule; Hearsay.
Opinions of persons or experts that AIX and Dynix are derivative works of the UNIX SOFTWARE PRODUCT. (SCO K Br. ¶ 192.)	SCO Ex. 11; SCO Ex. 139; SCO Ex. 276; SCO Ex. 277; SCO Ex. 287; SCO Ex. 288.	Untimely expert opinion; Exceeds Final Disclosures and thus violates the Court's order; Irrelevant; Improper expert opinion under FRE 702.
	SCO K. Br. ¶ 192; SCO Ex. 75; SCO Ex. 116; IBM Ex. 80; IBM Ex. 260; IBM Ex. 584.	No foundation or personal knowledge; Irrelevant; Improper expert opinion under FRE 702.
Allegations of misuse of material not identified in SCO's Final Disclosures included in SCO's proposed experts' reports. (SCO K Br. ¶¶ 193-197.)	SCO Ex. 139; SCO Ex. 144; SCO Ex. 274; SCO Ex. 276 SCO Ex. 277; SCO Ex. 278; SCO Ex. 281; SCO Ex. 283; SCO Ex. 284; Ex. 287; SCO Ex. 288; SCO Ex. 300.	Exceeds Final Disclosures and thus violates the Court's order.

Subject Matter of Dispute	Illustrative Excerpts	Conclusions
Citation to the Final Disclosures without supporting authentication or opinion. (SCO K Br. ¶¶ 193-194.)	SCO Ex. 144.	No foundation (unverified interrogatory response).
Statements regarding SCO's purportedly proper sale of licenses for Linux and SCO's termination of its Linux business. (SCO K Br. ¶¶ 198-208, 220-233.)	SCO Ex. 6; SCO Ex. 17; SCO Ex. 18; SCO Ex. 49; SCO Ex. 269; SCO Ex. 284; SCO Ex. 324; SCO Ex. 333; SCO Ex. 337; SCO Ex. 355; SCO Ex. 356; SCO Ex. 378; SCO Ex. 386; IBM Ex. 128; IBM Ex. 284; IBM Ex. 311; IBM Ex. 324.	Irrelevant.
Allegations of IBM's destruction of evidence and "hacking" into SCO's website. (SCO K. Br. ¶¶ 209-219.)	SCO Ex. 103; SCO Ex. 104 SCO Ex. 105; SCO Ex. 106; SCO Ex. 107; SCO Ex. 108; SCO Ex. 109; SCO Ex. 111; SCO Ex. 112; IBM Ex. 268; IBM Ex. 284; IBM Ex. 296; IBM Ex. 324.	Unsupported by admissible evidence; Irrelevant.
Statements relating to SCO's discovery conduct and disclosures. (SCO K. Br. ¶¶ 234-278.)	SCO Ex. 68; SCO Ex. 143; SCO Ex. 144; SCO Ex. 146; SCO Ex. 148; SCO Ex. 149; SCO Ex. 150; SCO Ex. 151; SCO Ex. 152; SCO Ex. 153; SCO Ex. 154; SCO Ex. 155; SCO Ex. 156; SCO Ex. 157; SCO Ex. 158; SCO Ex. 161; SCO Ex. 162; SCO Ex. 163; SCO Ex. 312; SCO Ex. 313; SCO Ex. 315; SCO Ex. 316; SCO Ex. 317; SCO Ex. 318; SCO Ex. 319; SCO Ex. 320; SCO Ex. 321; SCO Ex. 322; SCO Ex. 323; IBM Ex. 56; IBM Ex. 60; IBM Ex. 64.	No foundation (unverified interrogatory responses); Irrelevant.

Subject Matter of Evidence	Illustrative Examples	Objections
Opinions of negotiators of the APA relating to Novell's right to waive SCO's rights to contradict the plain meaning of the contract. (SCO K. Br. ¶¶ 279-293.)	SCO Ex. 38; SCO Ex. 39; SCO Ex. 40; SCO Ex. 42; SCO Ex. 45; SCO Ex. 46; SCO Ex. 47; SCO Ex. 48; SCO Ex. 50; SCO Ex. 76; SCO Ex. 351; SCO Ex. 360; IBM Ex. 260.	Violates the parol evidence rule.